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Supreme Court, U.S.
FILED
JUN 12 1992
OFFICE OF THE CLERK

No. 91-1754

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

STATE OF ILLINOIS,

Petitioner,

vs.

GEOFFREY FREEMAN,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First District, Third Division

REPLY BRIEF IN RESPONSE TO THE BRIEF IN OPPOSITION TO CERTIORARI

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THE ARGUMENT MADE IN THE PETITION FOR A WRIT OF CERTIORARI, TO THE EFFECT THAT THIS COURT'S *BATSON* DECISION DOES NOT REQUIRE AN EVIDENTIARY HEARING, WAS MADE REPEATEDLY AND EMPHATICALLY IN THE PETITION FOR LEAVE TO APPEAL FILED IN THE ILLINOIS SUPREME COURT.

Respondent asserts in his Brief in Opposition that the issue raised in the Petition for a Writ of Certiorari was never argued in the Illinois Supreme Court. (Brief in Opposition 5) That assertion is completely false. The Petition for a Writ of Certiorari raises the issue of whether this Court's *Batson* decision requires an evidentiary hearing with discovery and testimony under oath. That exact issue was repeatedly and emphatically raised in the Petition for Leave to Appeal filed in the Illinois Supreme Court by the State.

The following are some of the sentences in the Petition for Leave to Appeal (PLA) which raise that issue:

> "Moreover, the *Batson* decision itself, *Batson v. Kentucky*, 476 U.S. 79, 109 S. Ct. 1712, 1724 n. 24 (1986), imposes no such requirement and certainly did not envision such a proceeding." (PLA 2)

> "Moreover, the appellate court erred in mandating discovery of the State's Attorney's manuals or policies of jury selection where such a procedure is certainly 'trial-type' and well beyond the strictures of *Batson*. . . . (PLA 3)

> "By actually mandating the discovery and defense testimony, the appellate court has simply eliminated altogether the hearing judge's discretion as to the procedures, contravening *Batson* itself, *Batson*, 106 S. Ct. at 1724, n. 24, and the overwhelming weight of authority following *Batson* establishing the judge's discretion." (PLA 3)

> "The appellate court decision has exceeded its authority in mandating procedures where the *Batson* decision itself imposes no such requirement." (PLA 12)
>
> "Certainly, the *Batson* court could not have envisioned the disruptive type of procedure which the appellate court has here required." (PLA 13)
>
> "By mandating the defense testimony, the appellate court has altogether eliminated the judge's discretion as to the hearing's procedures, contravening *Batson*, 106 S. Ct. at 1724, n. 24, and the weight of authority after *Batson* establishing the judge's discretion." (PLA 15)
>
> "The case at bar provides an opportunity for this Court to determine what *Batson* procedures are mandated as a matter of law and which should be left to the discretion and implementation by the trial court." (PLA 17)

Therefore in the Illinois Supreme Court the State raised the same issue as in the Petition for a Writ of Certiorari. Moreover, by relying on the *Batson* case, which is a federal constitutional decision based on the Equal Protection Clause, the State made it clear that it was raising a federal constitutional issue in the Illinois Supreme Court. See *Illinois v. Rodriguez*, 497 U.S. 177, 110 S. Ct. 2793, 111 L.Ed.2d 148 (1990).

In addition, petitioner notes that the decision of the Appellate Court of Illinois in this case, requiring discovery and testimony under oath at a *Batson* hearing, has been followed in another decision of that court. *People v. Knott*, 224 Ill. App. 3d 236, 586 N.E.2d 479 (1st Dist. 1991), *leave to appeal granted* Ill. Sup. Ct. No. 73340, June 3, 1992.

CONCLUSION

For the reasons stated above and in the Petition for a Writ of Certiorari, petitioner respectfully requests that a writ of certiorari issue to review the opinion and judgment of the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,

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